

- (3) Is claimant entitled to additional temporary total disability compensation?
- (4) Is claimant entitled to past due medical bills for the injuries suffered to his neck, shoulders and upper extremities?

At oral argument to the Board, the parties acknowledged that the dispute regarding whether claimant had submitted timely written claim was no longer at issue before the Board. It was further acknowledged that the Administrative Law Judge in the body of the Award granted claimant outstanding medical bills for the initial care received from the September 25, 1992 accident to his low back and groin. However, under the award section, those medical expenses were not mentioned. The parties request the Board to clarify whether or not claimant is entitled to have those medical expenses paid.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds that the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail, and it is not necessary to repeat those herein. The Board finds the findings and conclusions set forth by the Administrative Law Judge to be appropriate and adopts same as its own as if specifically set forth herein.

Claimant alleges injury to his low back, groin, neck, shoulders and upper extremities as a result of a lifting incident on September 25, 1992. However, medical reports and personnel reports prepared contemporaneous with that accident deal only with the low back and groin area. There is no mention of claimant's neck, shoulders or upper extremities.

The medical records of Steven R. Osborn, M.D., the first doctor to treat claimant, fail to mention any complaints to claimant's neck, upper back or shoulders. The first time claimant mentioned any upper extremity, neck or shoulder problems was in April of 1993, when he was examined by a neurologist, Lizbeth de Padua, M.D., at Kansas City Clinical Neurology Associates. Even at that time, claimant failed to mention any work-related connection to the injuries, advising Dr. de Padua that he had had these difficulties on and off for approximately ten years. Claimant advised Dr. de Padua he did not know what was causing his current problems. The first mention of a work-related connection to these problems was in September 1993.

After claimant underwent an MRI indicating a herniated disc at C6-C7 and was advised of the necessity for surgery, he began discussing the problem in relation to its

being a work-related injury. Paul M. Arnold, M.D., a neurosurgeon in the Department of Neurosurgery at the University of Kansas Medical Center in Kansas City, Kansas, examined claimant on December 5, 2000, for the neck and upper extremity complaints. Dr. Arnold testified that it was very unlikely that the problems reported in April of 1993 to Dr. de Padua stemmed from anything that happened in September 1992. Hypothetically, Dr. Arnold stated if claimant injured his neck or cervical area in the September 1992 incident, he would have expected claimant to develop complaints within the first couple of weeks and probably not more than a month after the incident.

Dr. de Padua, at first, testified that the incident in September 1992 was the cause of claimant's upper extremity, neck and shoulder complaints. However, after reviewing the notes of Dr. Osborn, the occupational medicine specialist who examined claimant contemporaneous with the September 1992 accident, she acknowledged that if claimant did not have acute pain in the upper extremities, neck and shoulders within a couple of weeks of the incident, that would indicate less of a contribution from the incident to claimant's disc problems. She went on to state that considering the description of the board lifting incident on September 25, 1992, she was comfortable in testifying that the complaints claimant had in September of 1993 were not related.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

In this instance, claimant suffered accidental injury to his groin and low back on September 25, 1992, and both conditions resolved without permanency. As there is no dispute regarding the compensability of those injuries, claimant is entitled to the medical treatment received at that time for those injuries.

However, claimant has failed to prove that the 1993 complaints to his neck, shoulders and upper extremities are related to that incident. Claimant voluntarily terminated his employment with respondent in October of 1992. There is little evidence to connect his 1993 complaints with his employment with respondent. Therefore, the Board agrees with the Administrative Law Judge's determination that claimant has failed to prove any connection, and, therefore, benefits requested for his neck, shoulder and upper extremity complaints are denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant is awarded the medical benefits contemporaneous with his September 25, 1992

¹ K.S.A. 1991 Supp. 44-501 and K.S.A. 1991 Supp. 44-508(g).

accident, with those benefits limited to his injuries to his low back and groin areas. With regard to any complaints to claimant's neck, shoulders and upper extremities, the decision of the Administrative Law Judge to deny claimant any and all benefits should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph R. Ebbert, Attorney for Claimant
Kevin J. Kruse, Attorney for Respondent
Julie A. N. Sample, Administrative Law Judge
Director, Division of Workers Compensation